

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9  
10  
11 **IN RE LIFELOCK, INC., MARKETING  
AND SALES PRACTICES LITIGATION)**

)  
) MDL Docket No. 08-1977-PHX-MHM  
)

12 **PRELIMINARY APPROVAL ORDER**  
13  
14  
15  
16  
17

17 Currently pending before the Court are the Parties' Joint Motion for Preliminary  
18 Approval of Class Action Settlement, Approval of Class Notice, and Conditional  
19 Certification of a Settlement Class, (Dkt.#146), and Joint Motion to Transfer Fed. Trade  
20 Comm'n v. LifeLock, Inc., CV-10-0530-PHX-NVW to this Court. (Dkt.#141).

21 With respect to the Parties' Joint Motion to Transfer, **IT IS HEREBY ORDERED**  
22 granting the Motion on the grounds that the FTC Action is related to multidistrict litigation  
23 case styled as In re LifeLock, Inc., MDL Docket No. 08-01977-PHX-MHM. (Dkt.#141.)  
24 These two actions are inextricably related on the following bases: (1) they arise out of a  
25 similar series of transactions and events, (2) they involve common questions of law and fact,  
26 and (3) transfer of these cases to the same judge will avoid unnecessary costs and prevent  
27 substantial duplication of labor.  
28

1 With respect to the Parties' Joint Motion for Preliminary Approval of Class Action  
2 Settlement, Approval of Class Notice, and Conditional Certification of a Settlement Class,  
3 **IT IS HEREBY ORDERED** granting the Motion as follows. (Dkt.#146).

4 The PARTIES, acting through their counsel, subject to Court approval following  
5 notice to the SETTLEMENT CLASS and a hearing, have agreed to settle the matters  
6 consolidated in these proceedings, as set forth in the settlement agreement attached hereto  
7 as Exhibit A (the "AGREEMENT"). The PARTIES' unopposed Joint Motion for Preliminary  
8 Approval of Class Action Settlement, Approval of Class Notice, and Conditional  
9 Certification of a Settlement Class (the "Motion") was presented on April 12, 2010, before  
10 this Court. Having considered the papers and the arguments of counsel, the Court orders the  
11 following:

12 1. All of the definitions contained in the AGREEMENT shall apply to this Order  
13 and are incorporated by reference as if fully set forth herein.

14 2. The Motion is GRANTED. The AGREEMENT is preliminarily approved by  
15 the Court as fair, adequate, reasonable, and in the best interests of the putative class  
16 members. The Court hereby conditionally certifies for settlement purposes only and for no  
17 other purposes, the following Class:

18 SETTLEMENT CLASS: All persons in the United States who are current or past  
19 subscribers of LIFELOCK's identity theft protection services. Excluded from the Class are  
20 employees, officers and directors of LIFELOCK; any judge or employee of any court  
21 assigned to work on the MDL PROCEEDINGS, the RELATED STATE COURT ACTIONS  
22 and the UNDERLYING ACTIONS; and PLAINTIFFS' and LIFELOCK's attorneys and staff.

23 3. The Court conditionally and preliminarily finds that this action satisfies the  
24 requirements for class action approval under Federal Rule of Civil Procedure ("Rule") 23(a)  
25 and (b)(2). In support of this ruling, and for purposes of this Rule 23(b)(2) settlement, the  
26 Court conditionally and preliminarily finds that the class is so numerous that joinder of all  
27 members is impracticable, there are questions of law or fact common to the class; the claims  
28 or defenses of the representative parties are typical of the claims or defenses of the class; and

1 the representative parties will fairly and adequately protect the interests of the class. The  
2 Court further conditionally and preliminarily finds that LIFELOCK has acted on grounds that  
3 apply generally to the class so that final injunctive relief is appropriate respecting the  
4 SETTLEMENT CLASS as a whole.

5 4. The Court approves and appoints as Plaintiffs' CLASS COUNSEL the  
6 following:

7 Robert B. Carey  
8 Leonard W. Aragon  
9 Hagens Berman Sobol Shapiro LLP  
10 11 W. Jefferson St., Ste 1000  
11 Phoenix, AZ 85003

12 5. The Court approves and appoints as class representatives Plaintiffs Melvyn  
13 Blake, Alva Blake, Franco Vega, Byrl Lane, and Jason Sbalcio.

14 6. The PARTIES have agreed to provide individual notice to all CLASS  
15 MEMBERS by electronic or first class mail, as well as publication notice via a dedicated  
16 Internet settlement website and a hyperlink that will reside on LIFELOCK's website home  
17 page. The PARTIES have also agreed that CLASS MEMBERS may exclude themselves  
18 from the settlement. The Court acknowledges that a Rule 23(b)(2) class may be certified on  
19 a mandatory basis, i.e., without the right to opt out, and without receipt of notice of the  
20 settlement. Here, the AGREEMENT provides for notice and opt-out rights and thus ensures  
21 ample protection of CLASS MEMBERS' due process rights. Indeed, the Court finds that the  
22 proposed notice plan is the appropriate and the best practicable notice under the  
23 circumstances and adequately informs the CLASS MEMBERS regarding the terms of the  
24 proposed settlement. See, e.g., Rodriguez v. West Pub. Corp., 563 F.3d 948, 962 (9th Cir.  
25 2009) ("Notice is satisfactory if it 'generally describes the terms of the settlement in sufficient  
26 detail to alert those with adverse viewpoints to investigate and to come forward and be  
27 heard.'") (quoting Churchill Vill., LLC v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004) and  
28 Mendoza v. Tucson Sch. Dist. No. 1, 623 F.2d 1338, 1352 (9th Cir. 1980)). The Court  
further finds that the time period provided in the AGREEMENT for CLASS MEMBERS to  
object or request exclusion - eight (8) weeks after notice is initially provided - is sufficient

1 and complies with the requirements of due process. Torrise v. Tucson Elec. Power Co., 8  
2 F.3d 1370, 1375 (9th Cir. 1993) (settlement providing for twenty-six (26) days to opt-out  
3 adequate; settlement providing for thirty-one (31) days to object adequate). Accordingly, the  
4 Court hereby directs that notice be given in the form and manner proposed in the  
5 AGREEMENT, as set forth below.

6 7. The Court further finds that the settlement recited in the AGREEMENT falls  
7 within the range of settlements qualified for judicial approval and warrants the dissemination  
8 of notice to CLASS MEMBERS. The Court's finding is based upon its analysis of the  
9 relevant facts presented in the PARTIES' joint motion and considered the six factors  
10 expressly enunciated by the Ninth Circuit as relevant to the fairness determination at the  
11 preliminary approval stage: (1) the strength of plaintiffs' case; (2) the risk, expense,  
12 complexity, and likely duration of further litigation; (3) the risk of maintaining class action  
13 status throughout the trial; (4) the consideration offered in settlement; (5) the extent of  
14 discovery completed, and the stage of the proceedings; and (6) the experience and views of  
15 counsel. Molski v. Gleich, 318 F.3d 937, 953 (9th Cir. 2003).

16 a. The strength of plaintiffs' case. The Court has pending before it  
17 LIFELOCK'S Motion for Judgment on the Pleadings and PLAINTIFFS' Motion Regarding  
18 Choice of Law. Based on these motions, and all other pleadings before it, the Court notes  
19 that nothing suggests that PLAINTIFFS' claims are either so weak or so strong as to preclude  
20 the proposed settlement. The two pending motions independently have the potential to  
21 significantly impact the ultimate resolution on the merits, and thus the Court concludes that  
22 this factor strongly favors granting preliminary approval of the proposed settlement.

23 b. The risk, expense, complexity, and likely duration of further litigation;  
24 the risk of maintaining class action status throughout the trial, the extent of discovery  
25 completed, and the stage of the proceedings The Court finds that the following facts satisfy  
26 the second, third and fifth fairness factors. This litigation has proceeded in the MDL  
27 PROCEEDING and RELATED STATE COURT ACTIONS for more than two years with  
28 significant efforts and expenses by the PARTIES. Depositions of many of the named

1 plaintiffs have been completed and extensive discovery has been exchanged on an informal  
2 basis. Dispositive motions have been filed and fully briefed and are under consideration by  
3 this Court. There is no doubt that further litigation would be expensive, complex, time  
4 consuming and that this Court and multiple state courts would be required to resolve difficult  
5 and complicated issues of state and federal law relevant to both the propriety of class  
6 certification as well as ultimate liability and damages issues. The mature status of these  
7 cases, the anticipated cost of continued litigation, and the uncertainty regarding their ultimate  
8 outcome strongly favors preliminary approval.

9 c. The consideration offered in settlement. The Court finds that the fourth  
10 factor is met because of the substantial injunctive relief provided under the AGREEMENT  
11 that benefits past, present and future LIFELOCK subscribers, which included LifeLock's  
12 assurances that it would discontinue certain practices that had been challenged by  
13 PLAINTIFFS. The AGREEMENT also specifically preserves CLASS MEMBERS' right to  
14 participate in the \$11 million FTC consumer-redress program, as well as the right to opt out  
15 of the settlement and seek further recovery from LIFELOCK on an individual basis. Thus,  
16 the consideration to be provided under the AGREEMENT also favors preliminary approval.

17 d. The experience and views of counsel. Finally, regarding the sixth  
18 factor, the Court finds that settlement was reached through extensive and rigorous  
19 arms-length negotiations between the PARTIES and was not a product of collusion. Multiple  
20 written demands and offers were exchanged and rejected by the PARTIES and numerous  
21 meetings were convened among counsel before a final resolution was achieved. The  
22 proposed settlement was achieved only after, and as a result of, the settlement between  
23 LIFELOCK, the FTC, and the various States' Attorneys General. Plaintiffs' cases were, at  
24 least in part, a precipitating factor in the FTC settlement. The agreed-upon settlement terms  
25 are fair and reasonable and not a product of collusion.

26 8. All costs in connection with the identification of CLASS MEMBERS,  
27 dissemination of the class notice, and administration of this settlement shall be paid by  
28

1 LIFELOCK, as set forth in the AGREEMENT. The Court hereby approves Rust Consulting,  
2 Inc. as SETTLEMENT ADMINISTRATOR.

3 9. The SETTLEMENT ADMINISTRATOR shall within fourteen (14) days  
4 following entry of this Order cause to be sent a notice of the settlement to each member of  
5 the SETTLEMENT CLASS by electronic mail to his or her last known e-mail address as  
6 reflected in LIFELOCK's member records. The notice shall be in the form of Attachment  
7 A to the AGREEMENT. The SETTLEMENT ADMINISTRATOR shall cause to be sent the  
8 same notice, in the form of Attachment B to the AGREEMENT, within the same time period  
9 by postcard via first class mail to any member whose e-mail address is not reflected in  
10 LIFELOCK's records. In the event that any e-mail notice is returned as undeliverable, the  
11 SETTLEMENT ADMINISTRATOR will send the same notice within five days of such  
12 return by postcard via first class mail to the last known address reflected in LIFELOCK's  
13 records. Addresses for the sending of notice by first class mail shall be updated by the  
14 SETTLEMENT ADMINISTRATOR through the National Change of Address Database  
15 maintained by the United States Postal Service prior to mailing.

16 10. Within fourteen (14) days of entry of this Order, the SETTLEMENT  
17 ADMINISTRATOR shall cause to be active a settlement website at  
18 [www.lifelocksettlement.com](http://www.lifelocksettlement.com). The website will remain active through the EFFECTIVE  
19 DATE. The settlement website shall contain, link to, and provide for download of each of  
20 the following: (a) the Case Description and Questions substantially in the form of  
21 Attachment C to the AGREEMENT; (b) a final and fully executed copy of this  
22 AGREEMENT; (c) the Court's Order granting preliminary approval of this AGREEMENT  
23 and conditional certification of the SETTLEMENT CLASS described herein; and (d) a final  
24 and fully executed copy of the AGREEMENT with the FTC. LIFELOCK will include on  
25 its official website at [www.lifelock.com](http://www.lifelock.com) a link to the settlement website. The  
26 SETTLEMENT ADMINISTRATOR shall update the settlement website as becomes  
27 necessary to reflect current information regarding the status of the settlement. The e-mail  
28 and first class mail notice described in paragraph 8, above, shall provide the URL of the

1 settlement website and shall also provide directions for persons to obtain the information on  
2 and contents of the settlement website by mail or email.

3 11. Any member of the SETTLEMENT CLASS who wants to object to the  
4 settlement shall file with the COURT and serve on CLASS COUNSEL and LIFELOCK's  
5 COUNSEL any objections to the settlement within seventy (70) days of entry of this Order.

6 12. Any member of the SETTLEMENT CLASS who wants to be excluded from  
7 the SETTLEMENT CLASS shall submit a written request for exclusion that is postmarked  
8 within seventy (70) days of entry of this Order. The request shall also be mailed by first class  
9 mail to CLASS COUNSEL and LIFELOCK's COUNSEL. Any such request for exclusion  
10 shall set forth the following information to be effective: (a) the person's name and address;  
11 (b) a statement that such person is a member of the SETTLEMENT CLASS; and (c) a  
12 statement that such person is requesting exclusion from the SETTLEMENT CLASS.  
13 CLASS COUNSEL shall file with the COURT all requests for exclusion not less than ten  
14 (10) calendar days prior to the date of the final approval hearing.

15 13. Any member of the SETTLEMENT CLASS who does not make his or her  
16 objection known in the manner provided in this Order shall be deemed to have waived such  
17 objection and shall forever be foreclosed from making any objection to the fairness or  
18 adequacy of the proposed SETTLEMENT.

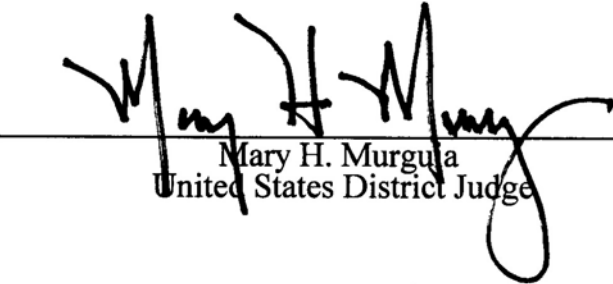
19 14. Any lawyer intending to appear at the hearing on final approval of the  
20 AGREEMENT, other than attorneys already in the case or attorneys for a state or federal  
21 entity, must be authorized to represent a member of the SETTLEMENT CLASS, must be  
22 duly admitted to practice law before the United States District Court for the District of  
23 Arizona or admitted pro hac vice to appear in that court, and must file an appearance no later  
24 than twenty (20) calendar days prior to the final fairness hearing.

25 15. The hearing on final approval of the AGREEMENT is hereby set for August  
26 10, 2010 at 1:30 P.M before the Honorable Mary H. Murguia in the United States District  
27 Court for the District of Arizona. The hearing on Plaintiffs' motion for attorneys' fees and  
28

1 costs also will be heard on that day. Papers for these motions shall be filed and served within  
2 ten (10) calendar days prior to the date of the final approval hearing.

3 DATED this 15<sup>th</sup> day of April, 2010.

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



Mary H. Murgula  
United States District Judge